

No. _____

IN THE
Supreme Court of the United States

DANIEL DAVID GARZA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

Nichole M. Buckle
Bar No. 305018
STROUD, CARMOUCHE, & BUCKLE, P.L.L.C.
7300 Fern Ave., Suite 903
Shreveport, Louisiana 71105
Phone: (318) 629-0014
Fax: (318) 404-1571
nikki@scb-law.com

QUESTION PRESENTED

Question Presented No. 1: Whether the lower courts erred in denying Mr. Garza's Motion to Suppress based on the erroneous finding that the officer had reasonable suspicion to initiate a traffic stop.

PARTIES TO THE PROCEEDING

Petitioner and Defendant-Appellant in the courts below is Daniel David Garza. The United States of America is the Appellee.

TABLE OF CONTENTS

QUESTION PRESENTED	ii
PARTIES TO THE PROCEEDING.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	vi
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTON.....	1
BASIS FOR JURISDICTION OF THE DISTRICT COURT	1
CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION	5
I. The lower courts erred in denying Mr. Garza's Motion to Suppress and allowing evidence seized from the vehicle following an unlawful traffic stop to be admitted...	5

CONCLUSION.....	8
CERTIFICATE OF COMPLIANCE	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

Statutes

U.S. Const. Amend. IV 2, 5

Cases

Delaware v. Prouse,
440 U.S. 648 (1979) 5

Terry v. Ohio,
392 U.S. 1 (1968) 5, 6

United States v. Andres,
703 F.3d 828 (5th Cir. 2013) 6

United States v. Gomez,
623 F.3d 265 (5th Cir. 2010) 6

United States v. Powell,
732 F.3d 361 (5th Cir. 2013) 6

Wong Sun v. United States,
371 U.S. 471 (1963) 5

PETITION FOR WRIT OF CERTIORARI

Daniel David Garza respectfully petitions for a writ of certiorari to review the erroneous judgment of the United States Court of Appeals, Fifth Circuit, affirming the denial of Mr. Garza's Motion to Suppress and allowing evidence seized from a vehicle during an unlawful traffic stop to be admitted.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Fifth Circuit is reported at 730 Federal Appendix 258. (Appx. 4). The Order of the United States District Court for the Western District of Louisiana at issue in this Petition is unreported. (Appx. 3).

JURISDICTION

On July 11, 2018, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of the United States District Court for the Western District of Louisiana, Shreveport Division. (Appx. 4). This petition has been timely filed within 90 days of that order. Sup. Ct. R. 13.1. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

BASIS FOR JURISDICTION OF THE DISTRICT COURT

The District Court had jurisdiction pursuant to 18 U.S.C. § 3231.

CONSTITUTIONAL AND STAUTORY PROVISIONS INVOLVED

The following constitutional and/or statutory provisions relevant in these proceedings are as follows:

(1) U.S. Const. Amend. IV provides, in pertinent part:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...

STATEMENT OF THE CASE

On November 17, 2016, DEA Task Force Officer Rick Anderson was informed by a “cooperating source” that co-defendant Bart Rogers was at the Baymont Inn on Monkhouse Drive in Shreveport, Louisiana attempting to distribute methamphetamine. Members of the DEA Task Force set up surveillance at the hotel. At approximately 11:16 a.m., Special Agent Paul Hursey observed a red Ford Focus, bearing a Texas license plate, exit the parking lot. Special Agent Hursey observed a white female driver, a white male passenger, and a Hispanic male in the back seat of the vehicle (Mr. Garza).

Task Force Officer Anderson requested a Caddo Parish Sheriff’s Office K-9 unit to initiate a traffic stop “if the K-9 Deputy observed a traffic violation.” CPSO Sgt. Chris Bane responded and began to follow the red

Ford Focus but failed to activate his patrol camera as he followed the vehicle. In fact, despite his instructions and understanding that he was to initiate a traffic stop only after observing a traffic violation, the patrol camera was activated only when Sgt. Bane turned on his lights and sirens to initiate the traffic stop. The video, which is supposed to automatically record and maintain 30 seconds of activity prior to activation, does not show that any traffic violation occurred. Nevertheless, Sgt. Bane stated in the Complaint Affidavit that he observed “improper lane usage” prior to initiating the traffic stop.

After initiating the traffic stop, Sgt. Bane contacted the female driver of the vehicle and received verbal permission to search the vehicle. Inside the vehicle agents located a blue backpack on the front passenger side floor board that contained methamphetamine and a firearm.

The Grand Jury returned an Indictment charging Defendant-Appellant Daniel David Garza (“Mr. Garza”) and his co-defendants, the white male in the front passenger seat and the female driver of the vehicle, with conspiracy to possess with intent to distribute methamphetamine (Count 1). Mr. Garza and the other male passenger were also charged with possession with intent to distribute methamphetamine (Count 2), possession of a firearm in furtherance of drug trafficking (Count 3), and possession of a firearm by a convicted felon (Counts 4 and 5).

On March 30, 2017, Mr. Garza filed a Motion to Suppress Traffic Stop and All Evidence Seized from the Vehicle, seeking to exclude all evidence from the vehicle because the law enforcement officers lacked

reasonable suspicion to initiate the traffic stop, thus all evidence should be suppressed as poisonous fruits. Following an evidentiary hearing on May 30, 2017, the Magistrate Judge issued an oral report and recommendation that the Motion to Suppress be denied. On June 29, 2017, over the objections of Mr. Garza, the District Court adopted the report and recommendation and denied the Motion to Suppress.

On July 24, 2017, Mr. Garza entered a conditional plea to Counts 1 and 3 of the Indictment, specifically reserving his right to appeal the adverse ruling of the District Court as to the Motion to Suppress. On October 20, 2017, Mr. Garza was sentenced to 60 months as to Count 1 and 60 months as to Count 3, to run consecutively, for a total of 120 months. Thereafter, on January 17, 2018 Mr. Garza timely appealed to the United States Court of Appeals for the Fifth Circuit. In an opinion rendered on July 11, 2018, the Fifth Circuit affirmed the judgment of the District Court.

REASONS FOR GRANTING THE PETITION

The lower courts erred in finding that the traffic stop was justified at its inception and erred in denying Mr. Garza's Motion to Suppress.

Intervention by this Honorable Court is necessary to correct the lower courts' error and to protect Mr. Garza from the violation of his Fourth Amendment right to be free from unreasonable searches and seizures. Although there is an abundance of jurisprudence setting forth the standard for determining whether reasonable suspicion exists to justify the inception of a traffic stop, the lower courts

in this case have erroneously accepted the incredible and uncorroborated testimony of the law enforcement officer and refused to consider the reasonable actions that the officer could, and should, have taken under the facts and circumstances presented in this case.

I. The lower courts erred in denying Mr. Garza's Motion to Suppress and allowing evidence seized from the vehicle following an unlawful traffic stop to be admitted.

The Fourth Amendment guarantees “[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. U.S. Const. Amend. IV. This protection extends to brief investigatory stops of persons, including persons in vehicles. *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1858, 20 L.Ed.2d 889 (1968).

For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, has occurred. *Terry* at 9. If an officer lacks reasonable suspicion to initiate the stop, under the “fruit of the poisonous tree” doctrine, all evidence derived from the exploitation of the illegal stop must be suppressed. See *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S.Ct. 407, 9 L.Ed.2d 411 (1963). The essential purpose of the Fourth Amendment’s “reasonableness” requirement is “to safeguard the privacy and security of individuals against arbitrary invasions. . . .” *Delaware v. Prouse*, 440 U.S. 648, 653-654 (1979).

The legality of a traffic stop is analyzed under the two-part test in *Terry v. Ohio*. 392 U.S. 1, 88 S.Ct.

1868, 20 L.Ed.2d 889 (1968). In analyzing the propriety of a traffic stop under *Terry*, the court first asks whether the officer's action in stopping the vehicle was: (1) initially justified at its inception by reasonable suspicion. *U.S. v. Powell*, 732 F.3d 361, 369 (5th Cir. 2013). The court must then determine "whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop of the vehicle in the first place." *U.S. v. Andres*, 703 F.3d 828, 832 (5th Cir. 2013).

"For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle." *Id.* at 832. The burden of proving that a traffic stop was justified at its inception rests with the Government. *See U.S. v. Gomez*, 623 F.3d 265, 269 (5th Cir. 2010).

In this case, Sgt. Bane did not articulate any reasons to support a belief that criminal activity was occurring or was about to occur. Rather, the sole basis for the traffic stop was the he actually observed a traffic violation (improper lane change), and therefore had probable cause to believe an offense had been committed. However, when considering the totality of the facts and circumstances, Sgt. Bane's testimony is simply not credible. *See Appx. 2.*

Sgt. Bane reported that he observed "improper lane usage" prior to initiating the traffic stop, but the video from his patrol unit does not show the alleged traffic violation. In fact, the video confirms that no traffic violation occurred in the forty (40) seconds prior to Sgt. Bane activating his emergency lights and sirens. Sgt. Bane attempted to explain the discrepancy at the evidentiary hearing in the District

Court by testifying that he located the vehicle traveling east on I-20 near the Louisiana State Fairgrounds and that he waited until the vehicles were in a clear area before initiating the traffic stop. According to Sgt. Bane, the recording should automatically back up and capture the thirty (30) seconds of travel prior to activation of the emergency equipment. (Appx. 2).

Respectfully, Sgt. Bane's testimony is not believable. Sgt. Bane is a veteran law enforcement officer having more than 21 years' experience with the Caddo Parish Sheriff's Office. At the time of the traffic stop, he had been asked to assist the DEA and was instructed to look for a specific vehicle that was believed to be carrying illegal narcotics. Sgt. Bane's sole purpose was to follow the vehicle and initiate a stop if a traffic violation was observed.

Despite Sgt. Bane's goal of observing a traffic violation in order to initiate a traffic stop, Sgt. Bane testified that he did not activate his camera when he pulled behind the vehicle nor did he activate the camera when he allegedly observed a traffic violation. Sgt. Bane attempted to justify his failure by claiming that he traveled behind the vehicle for several miles before initiating the traffic stop because he was trying to get "through the traffic" and was looking for a safe environment to initiate the stop.

A review of the video shows that at no point did a traffic violation occur—the vehicle never crossed the dotted lines, fog lines, or moved into another lane of traffic. The video also does not support Sgt. Bane's testimony that the vehicle was traveling in a congested traffic area or an otherwise "unsafe" area; rather, the video shows that there was very little traffic, that there were no vehicles on the interstate

between or to the side of the red Ford Focus, and that Sgt. Bane could have initiated a traffic stop at any point as he followed the vehicle. Contrary to Sgt. Bane's testimony, he was not proceeding in a high traffic, stressful, or dangerous environment that would have precluded him from safely activating his camera immediately upon observing the suspect vehicle in order to capture the entire pursuit, nor was he precluded from initiating a traffic stop immediately upon observing the traffic violation, if the violation had in fact occurred. (Appx. 1).

Sgt. Bane's convenient testimony is not, and should not be, sufficient to establish either reasonable suspicion or probable cause to justify the initiation of a traffic stop. An experienced law enforcement officer such as Sgt. Bane would have activated his camera immediately upon seeing the subject vehicle, or at least no later than observing the alleged traffic violation in order to ensure the traffic violation was captured on video. Instead, Sgt. Bane traveled for several miles in light traffic and, *without observing a traffic violation*, "conveniently" initiated a traffic stop just prior to the subject vehicle exiting Caddo Parish and crossing the river into another jurisdiction.

CONCLUSION

The video does not corroborate Sgt. Bane's testimony that a traffic violation occurred, and no reasonable fact-finder could find that Sgt. Bane's testimony was credible based on the totality of the circumstances. In the absence of any credible or corroborating evidence, the Government's contention that reasonable suspicion existed to justify the traffic stop at its inception amounts to nothing more than

unsupported argument. Accordingly, any evidence seized from the vehicle as a result of the illegal stop should have been suppressed as poisonous fruits.

WHEREFORE, Petitioner Daniel David Garza respectfully submits that the lower courts erred in denying his Motion to Suppress and allowing the evidence seized from the vehicle to be admitted. This Petition for Writ of Certiorari should therefore be granted, as intervention by this Honorable Court is necessary to correct the lower courts' error and to protect Mr. Garza's Fourth Amendment right against unreasonable searches and seizures.

Respectfully submitted,

Nichole M. Buckle

Bar No. 305018

STROUD, CARMOCHE, & BUCKLE, P.L.L.C.

7300 Fern Ave., Suite 903

Shreveport, Louisiana 71105

Phone: (318) 629-0014

Fax: (318) 404-1571

nikki@scb-law.com

CERTIFICATE OF COMPLIANCE

No. _____

DANIEL DAVID GARZA,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondents.

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Writ of Certiorari contains words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on this 5th day of October, 2018.

s/ Nichole M. Buckle, Bar No. 305018

CERTIFICATE OF SERVICE

No. _____

DANIEL DAVID GARZA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

I HEREBY CERTIFY that a copy of the above and foregoing Petition for a Writ of Certiorari was filed electronically with the U.S. Supreme Clerk of Court. Notice of this filing has been sent to the following through the United States Postal Service:

CAMILLE ANN DOMINGUE
Assistant United States Attorney
300 Fannin Street, Suite 3201
Shreveport, LA 71101
(318) 676-3600

Solicitor General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W., Room 5614
Washington, DC 20530-0001

Daniel David Garza
#19902-035
FCI Bennettsville
696 Muckerman Road
Bennettsville, SC 29512

Signed in Shreveport, Louisiana, on this 5th day of October, 2018.

/s/ Nichole M. Buckle

OF COUNSEL